

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC NAHODIL,

Plaintiff,

Case No. 19-10332

vs.

HON. GEORGE CARAM STEEH

NORFOLK SOUTHERN RAILWAY CO.,

Defendant,

and

NORFOLK SOUTHERN RAILWAY CO.

Third-Party Plaintiff,

vs.

JEROME PERNELL, JR.,

Third-Party Defendant.

ORDER SETTING ASIDE CLERK'S ENTRY OF DEFAULT
[ECF No. 19] AND GRANTING THIRD-PARTY DEFENDANT'S
REQUEST FOR EXTENTION OF TIME TO FILE ANSWER [ECF No. 20]

Third-party plaintiff, Norfolk Southern Railway Co. ("Norfolk"), filed its third-party complaint against Mr. Jerome Pernell, Jr. on March 18, 2019. A certificate of service was filed with the court on April 16, 2019, showing personal service on Mr. Pernell at 21101 Atlantic Avenue, Warren, MI on

April 4, 2019 [ECF No. 16]. Norfolk sought clerk's entry of default, which was entered as to Mr. Pernell on May 1, 2019 for failure to answer [ECF No. 19]. This matter comes before the court on third-party defendant Jerome Pernell, Jr.'s request for extension of time to file an answer to the third-party complaint.

The court construes Mr. Pernell's request as a motion to set aside entry of default. Norfolk opposes Mr. Pernell's request, pointing out that he fails to address the requirements to set aside a default pursuant to Fed. R. Civ. P. 55(c). In support of its contention that service upon Mr. Pernell was proper, Norfolk submits the affidavit of its process server which states that he served an individual who identified himself as Jerome Pernell at 21106 Atlantic Avenue on April 4, 2019. Mr. Pernell, who is not represented by counsel, submits a letter from his property management company stating that he vacated the Atlantic Avenue residence on January 31, 2019. Plaintiff, Eric Nahodil, concurs in setting aside entry of default against Mr. Pernell [ECF No. 24].

Given Mr. Pernell's knowledge of the proceedings and his request to file an answer to the third-party complaint, the court finds no prejudice to third-party plaintiff and exercises its discretion to set aside entry of default. Two months have passed since Mr. Pernell made his request, providing

him ample time to gather information pertaining to his case and to find counsel if desired. Mr. Pernell's answer to the third-party complaint will be due on or before August 9, 2019.

Now, therefore,

IT IS HEREBY ORDERED that clerk's entry of default is set aside and third-party defendant Jerome Pernell Jr. has until August 9, 2019 to file an answer to the third-party complaint.

Dated: July 23, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on July 23, 2019, by electronic and/or ordinary mail and also on Jerome Pernell, Jr., 23248 Grabar Square, Warren, MI 48092.

s/Barbara Radke
Deputy Clerk